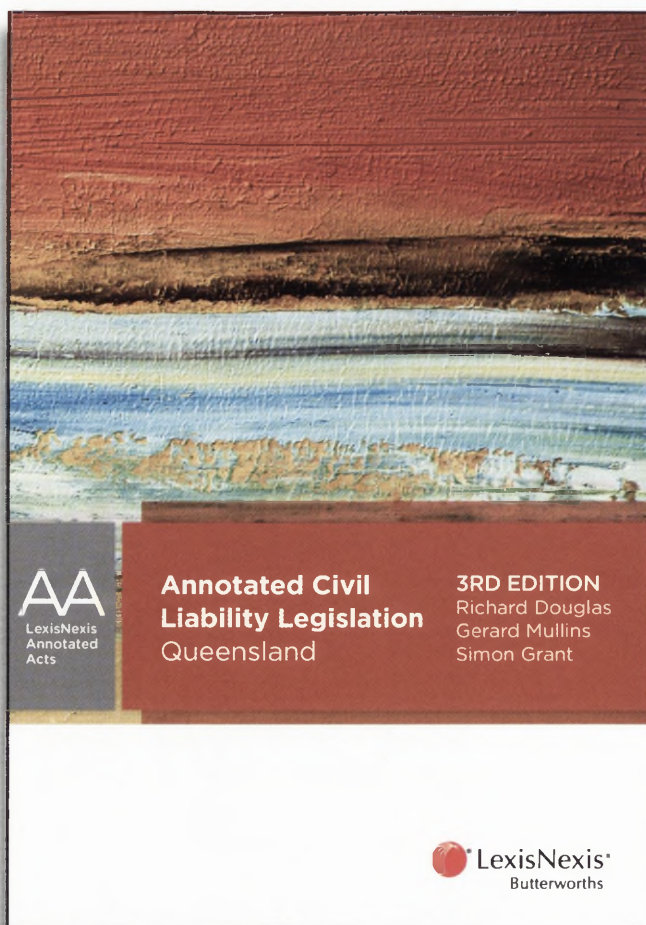


Reviewing civil liability legislation 10 years on ...

By Bill Madden

One topic, two books, two publishers. Just over ten years since the beginnings of civil liability legislation in Australia, only Queensland and New South Wales (NSW) benefit from books describing and annotating the crucially important civil liability legislation.



The Queensland-focused text by three members of the Queensland Bar, Douglas, Mullins and Grant, has reached its third edition. It is the second edition for the NSW text by Dominic Vila of the NSW Bar.

Both books have grown substantially since their first edition, now running to almost 700 pages. Both are structured by reference to the sequence of sections of their respective statutes and so are a comfortably familiar reference for those working with the legislation.

In Queensland, after a short preliminary section, the core of the book (some 400 pages) is devoted to the broad heading 'civil liability for harm'. The remainder of the substantive discussion relates to assessment of damages for personal injury; about 50 pages. Readers of this journal will be aware that the civil liability legislation across Australia is not uniform, hence the need identified by the authors in their preface for a Queensland-specific text.

While that is true, there are a number of common components to the legislation nationally, permitting the authors to draw extensively on cases from other jurisdictions. For example, the leading NSW decision, *Dobler v Helverson*, is used to assist in the interpretation of the Queensland provision regarding professional negligence. This extensive national case referencing benefits not only the Queensland reader, but also those seeking assistance on interpretation of provisions in other states and territories. Also of benefit to readers outside of Queensland are the short cross-references in the text to passages in the publisher's online aid base-leaf reference, *Civil Liability Australia*, written by the same authors and updated four times each year.¹

The commentary on breach of duty highlights the scope of the Douglas, Mullins and Grant book. It often goes well beyond a brief description of the relevant sections with some pointers to relevant cases and extensive discussion of the relevant principles, including common law background. We see, for example, discussions of whether a duty of care is owed to an individual or a class, the relevance of judicial notice/common experience and other topics not expressly referred to in the civil liability legislation.

The publisher points out that this third edition now includes comprehensive treatment of the proportionate liability provisions of the Queensland legislation, which impact commercial and property damage claims arising in claims for negligence and statutory misleading or deceptive conduct. It also contains cross-references to the provisions of the *Workers' Compensation and Rehabilitation Act 2003* (Qld), which from 1 July 2010 largely adopted the *Civil Liability Act 2003* (Qld) provisions.

Turning to Dominic Villa's book, for those of us in NSW the first edition was an essential reference in the early days of the legislation and we have waited, more or less patiently, for the arrival of this second edition.

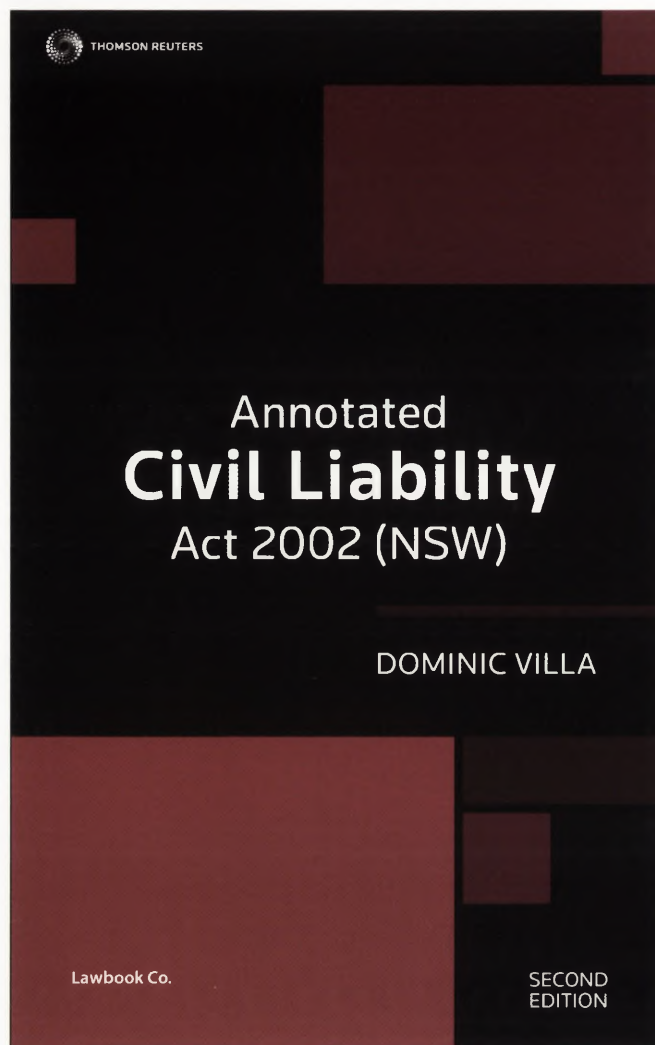
As before, the structure follows the sequence of sections of the NSW legislation, which feels intuitive to those of us now familiar with the legislation. Most of the first half of the book comments on the general 'negligence' content in Part 1A – duty of care, causation, professional negligence and the like. The remainder is given over to the various Parts regarding mental harm, intoxication, apologies and so on. Amendments to the initial legislation have of course been added to this edition, such as for offender damages, food donor liability and those prompted by intervening caselaw which did not find favour with Parliament, such as for wrongful birth damages.

The value in this second edition is not limited to the commentary on amendments, but extends the analysis of the wealth of caselaw that has developed in the intervening 10 years. Notwithstanding the volume of caselaw now available, the discussion under each heading remains succinct. Examples include the important, recent decision in *Dean v Phung*, addressing the exclusion of intentional acts with intent to cause harm. The author helpfully includes a discussion on recklessness, which was only touched on in that decision but seems likely to be of importance in the future.

Where caselaw is limited, such as for the wrongful birth damages provisions, Villa helpfully includes overseas authority to illustrate the potential operation of the civil liability provisions.

The author does not blandly recite the judicial decisions on each provision without comment. He makes criticisms where it appears that the sections may have been misunderstood, such as in relation to the non-delegable duty provisions.

The two different publishers have priced both books at \$195 softcover. They will be available shortly eBook format for the same price. There is a bundle price for the two formats of about \$250. This review was based on the printed



versions; so unfortunately I cannot comment on any added useful features in the eBook format.

Dominic Villa's new book is an essential text for NSW litigation lawyers. Douglas, Mullins and Grant's book must fulfil the same role in Queensland. However, even for those in other jurisdictions, the books are well worthwhile. ■

Note: 1 LexisNexis, *Civil Liability in Australia*, accessible at: <<http://www.lexisnexis.com.au/en-au/products/civil-liability-in-australia.page>>.

Annotated Civil Liability Legislation – Queensland (3rd edition) 2012

Authors: Richard Douglas, Gerard Mullins, Simon Grant

Publisher: LexisNexis Butterworths, published September 2012

Annotated Civil Liability Act 2002 (NSW) (2nd edition) 2013

Authors: Dominic Villa

Publisher: Thomson Reuters (Lawbook Co), published February 2013

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